Md. to Snuff Workplace Smoking

Rule Includes Bars; Tobacco Industry Vows Legal Battle

Washington Post A1 3/9/94

By Liz Spayd
Washington Post Staff Writer

Maryland is about to become the first state in the nation to order a smoking ban in all workplaces—not only in office buildings, but also in bars, restaurants, hotels and convention facilities.

Arguing that the state has an obligation to protect workers from secondhand smoke, William A. Fogle Jr., the state's secretary of licensing and regulation, ruled that on-the-job smoking should be added to the list of illegal hazards that violate state occupational health and safety laws.

The smoking ban is scheduled to go into effect in about 60 days. The only apparent obstacle in its way is an expected court challenge by the tobacco industry.

The decision comes amid a wave of anti-smoking measures across the country. Yesterday, the Defense Department banned smoking in all military installations. Dozens of private businesses—including McDonald's, Arby's, Sears and several major shopping malls—have imposed similar restrictions.

But Maryland will be the first state to institute such a comprehensive ban, covering about 2.5 million workers in hundreds of businesses across the state. The move also is certain to make Maryland a testing ground for determining whether a state can impose such restrictions using workplace safety regulations.

Tobacco industry officials assailed the ruling as extremist and said they will fight vigorously for a court injunction to stop the ban.

"This matter is clearly going to be litigated," said Bruce Bereano, Tobacco Institute lobbyist in Annapolis. "They've made it clear they're going through with this, and we've made it clear we will take it to court."

The planned regulation also is drawing fire from many restaurant and bar owners, who fear they could

See SMOKING, A9, Col. 1

2046187380

Source: https://www.industrydocuments.ucsf.edu/docs/fywl0000

Md. Rule Banning Smoking in Workplace to Kindle a Legal Showdown

SMOKING, From A1

see a steep decline in business if their customers aren't allowed to light up.

"That's a bit much to tell people they can't smoke in a bar," said Barbara Norman, manager of the Oak Tree nightclub in Oxon Hill. "Drinking and smoking go hand in hand. If people can't sit in a bar and enjoy themselves, then why be here?"

Proprietors of businesses such as Oak Tree, which is just a few miles from the District line, are most concerned that the ban will drive their customers into the city, calls to about a dozen businesses suggested.

The health problems associated with secondhand smoke have been attracting significant attention recently. Although Maryland officials have been moving toward a workplace smoking ban for months, most observers had expected restaurants and bars to be excluded.

But Fogle, disregarding the recommendation of an advisory panel, ruled last week that no workplace should be exempt, and he said yesterday he will stick by that decision. Maryland has the second-highest cancer rate in the country, which Fogel said was a major factor in his ruling.

"I wasn't going to be in the position of saying workers in an ice-cream parlor should be protected from secondhand smoke, but employees in a bar should not be. I'm not going to protect one group and not the other," Fogle said.

The regulation must go through two routine procedures before taking effect, but Fogle said he has the backing of the governor and the assurance of the state attorney general that such a regulation can legally be imposed. Enforcement will be done by state inspectors as part of their routine, with fines that could range up to $7,000 per offense.

Most large employers already restrict smoking in offices except in specially designated areas. Under the new ban, employers still would be allowed to provide separate, enclosed rooms for workers who smoke, so long as those areas meet specified ventilation standards.

Although Maryland would become the first state to impose such comprehensive smoking restrictions, several other jurisdictions are moving in that direction.

A year-old District law bans the sale of cigarettes in vending machines and requires private employers to have a written policy on smoking in their workplace. Virginia has an anti-smoking law that forbids smoking in certain public places, such as cashier lines, but allows private employers to make their own smoking policies.

Utah, among the more aggressive states on the issue, has a bill awaiting the governor's signature that would restrict smoking in most workplaces. But it exempts bars and businesses with 10 or fewer employees.

The tobacco industry plans a march in Washington today to protest the onslaught of anti-smoking measures nationwide.

As aggressive as some states have become, none has taken the route that Maryland is choosing—to employ occupational health and safety regulations as the basis for a ban.

The tobacco industry insists that approach won't withstand a legal challenge because Maryland has conducted no studies or evaluations to determine whether secondhand smoke is an environmental hazard in the workplace.

Some lawyers interviewed yesterday disagreed, arguing that the Environmental Protection Agency already has classified secondhand smoke as an environmental hazard.

"I can't see anything that would prohibit such a regulation," said Pamela J. White, a lawyer with a Baltimore law firm that specializes in health and labor law. "I think the tobacco lobby will be hard pressed to require additional studies on secondhand smoke when there is already such a substantial body of information relied on by medical authorities and government officials."

Many businesses in Maryland and elsewhere already have imposed smoking bans on the theory that most customers would applaud the move.

"Most all the response has been positive," said Diane Lewis, director of marketing at Towson Town Center, which turned smoke-free last year. "We've gotten over 100 phone calls and 28 letters about the ban, and 95 percent have been in favor of it."

2046187381

Source: https://www.industrydocuments.ucsf.edu/docs/fywl0000